

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
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In the Matter of Qwest Corporation's  
Alternative form of Regulation (AFOR)  
Service Quality Plan

ISSUE DATE: July 1, 2002

DOCKET NO. P-421/AR-97-1544,  
P-421 et al/PA-99-1192

In the Matter of Qwest's Corporation's  
Compliance with the Retail Service Quality  
Components of its Merger Agreement

ORDER REQUIRING CERTAIN  
RECALCULATION BY QWEST AND  
APPROVING AN OUTREACH VENDOR

**PROCEDURAL HISTORY**

**I. History of this Case**

On December 11, 1998, the Commission issued its Order approving an alternative form of regulation plan (AFOR)<sup>1</sup> for US West Communications Inc. (USWC).<sup>2</sup> The AFOR was effective January 1, 1999. The plan includes, among other things, service quality standards and corresponding penalties for failures to meet the standards. The plan requires the company to provide monthly data (reported quarterly) on held orders, installation data for design and non-design services, out-of-service repair rates, missed repair appointments, trouble and repeat trouble rates, response times, and complaints.

For standards that are exchange-specific, penalties are to be paid to each customer located within the affected exchange. For failure to meet statewide standards, penalty payments are to be made to a telecommunications fund to be used primarily to benefit the Company's customers in Minnesota through telecommunications projects in the Company's local service territory.

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<sup>1</sup> FINAL ORDER REGARDING USWC'S ALTERNATIVE REGULATION PLAN, PURSUANT TO MINN. STAT. § 237.764, SUBD.2, Docket No. P421/AR-97-1544.

<sup>2</sup> Formerly U S West, now Qwest Corporation (Qwest).

On June 28, 2000 the Commission issued its ORDER ACCEPTING SETTLEMENT AGREEMENTS AND APPROVING MERGER SUBJECT TO CONDITIONS,<sup>3</sup> which, among other things, accepted and adopted the Stipulation and Agreement between the petitioners and the Department of Commerce (DOC) and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) as modified by the parties' May 4 and 15, 2000 filings. This agreement (Merger Stipulation) imposed procedural and substantive conditions in the areas of overall service quality, advanced services and wholesale service quality.

On May 16, August 16, and November 15, 2001, Qwest submitted its 1st, 2nd and 3rd 2001 quarterly reports, respectively. On November 16, 2001, Qwest submitted its supplement to its 3rd quarter report. On February 15, 2002, Qwest submitted its 4th quarterly report.

The DOC filed comments on May 10, 2002, recommending that Qwest pay penalties under both the AFOR and the Merger Stipulation.

On May 17, 2002, Qwest filed its Response to the DOC comments. On May 14, and May 17, 2002, Qwest filed its Correction of Trouble Reports and on May 23, 2002, Qwest filed a Revised Calculation of 2001 Penalties.

## **II. History of the Consumer Outreach Program**

On April 13, 2001, the Commission issued its ORDER SETTING 1999 PENALTY AMOUNTS AND DIRECTING DISBURSEMENTS OF FUNDS FOR 1999 AND PART OF 1998.<sup>4</sup> Among other things, this Order directed that the penalty incurred by Qwest for the period July 1, 1998 through December 31, 1998 be used for a consumer outreach program to be conducted by an entity to be approved by the Commission.

The DOC was to make an informational filing detailing its plan for the consumer outreach and education campaign and file a description of all proposals submitted and make recommendations for Commission decision.

On July 20, 2001, the DOC made an informational filing, submitting a Notice of Request for Proposals (RFP) for Commission approval.

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<sup>3</sup> In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Communications, Inc., Docket No. P-3009, 3052, 5096, 421, 3017/PA-99-1192.

<sup>4</sup> In the Matter of an Investigation into Qwest Corporation's Service Quality and In the Matter of Qwest Corporations's Alternative Form of Regulation (AFOR) Service Quality Plan. Docket Nos. P-421/CI-95-648 and P-421/AR-97-1544.

On August 7, 2001, the Commission asked the DOC to revise its RFP to reflect the Commission's and the DOC's intent for the DOC to take direct charge of the project and only submit the following for Commission action:

- a. for Commission approval - the DOC's recommendation on the choice of vendor for the outreach project;
- b. for Commission notice - the DOC's report with a copy of each resulting end-product, and a complete accounting of how the \$890,500 was spent.

On December 10, 2001, the DOC published and distributed the RFP. The DOC received eight proposals by the deadline of February 8, 2002.

The RUD-OAG submitted its recommendation on May 8, 2002.

The DOC submitted its recommendation on May 10, 2002.

The above matters came before the Commission on May 29, 2002.

## **FINDINGS AND CONCLUSIONS**

This Order addresses only two items: 1) certain parts of Qwest's calculation of its service quality performance for the period January 1 through December 31, 2001; and 2) the selection of a Consumer Outreach Project Provider.

### **III. Service Quality Issues**

#### **A. Background**

As part of its AFOR, Qwest agreed to eight service quality standards, along with customer-specific remedies and penalty payments for failure to meet those standards. Those standards included in the AFOR are as follows:

- primary line held orders;
- missed installations for designed services;
- missed installations for non-designed services;
- trouble report rate;
- repeat trouble report rate;
- out-of-service troubles cleared in 24 hours;
- service center answer times; and
- missed repair appointments.

The Merger Stipulation contains additional penalties and customer remedies over and above those provided for under the AFOR.

The parties took issue with three service quality issues - trouble reports, force majeure and “look back” periods. These are discussed below:

**B. Trouble Reports**

**1. Positions of the Parties**

**a. Qwest**

Qwest argued that it approached the calculation of the trouble rate in a manner consistent with the AFOR. It argued that because there are separate measures and separate remedies under the AFOR for the trouble report rate and the repeat trouble report rate, Qwest avoids double-counting by excluding repeat trouble reports from the trouble report rate measure. Qwest limits the excluded repeats to troubles on the same line within 30 days regarding the same trouble.

It argued that the DOC wants repeat trouble reports to be counted both as a trouble rate incident and also as a repeat trouble rate incident. This would have the effect of doubling the penalty for a single incident.

**b. The DOC**

The DOC noted that Qwest excluded repeat troubles from the calculation of the trouble report rate.

The DOC argued that the repeat trouble report and the trouble report reflect performance in different areas. The purpose of a separate repeat trouble report rate is to identify the number of instances in which the Company fails to identify and correct the trouble with the first report. On the other hand, the trouble report rate is to measure the incidence of all customer reports of trouble. It argued that the AFOR language clearly requires that both trouble and repeat trouble reports be included in calculating compliance with the trouble report standard. The DOC recommended that Qwest include repeat trouble reports in the calculation of the trouble report rate.

In response to Qwest’s argument that if it included repeat troubles in the calculation of the trouble report rate Qwest would be penalized twice for the same occurrence of trouble, the DOC argued that Qwest is ignoring the fact that the two measures reflect performance in two different areas. One measures the overall incidence of trouble in an exchange, while the other focuses on the number of times Qwest failed to fix a problem the first time.

Further, the DOC indicated that Qwest’s proposed QPAP provides for counting a repeat trouble report in both the repeat measure and in the trouble report measure, and pay penalties for both instances of failure.

### **C. Commission Action on the Trouble Report**

The Commission is in agreement with the DOC that the trouble report and the repeat trouble report are two separate measures and, as such, the calculation of the trouble report should include the repeat troubles. For this reason the Commission will adopt the DOC's interpretation of the repair counting and will direct Qwest to recalculate this and submit it as a compliance filing.

### **D. Force Majeure**

There was no dispute among the parties about the specific events claimed by Qwest under this category. The only issue raised by the DOC at the hearing before the Commission concerned Qwest's force majeure treatment of events in June. The DOC argued that Qwest was entitled to exclude the trouble data associated with the force majeure events but should have added back into the trouble report for the month of June an average of the trouble reports for the month. This would, in effect, normalize the data for the month.

Qwest argued that it did normalize the data and agreed to show the DOC how it did so. The Commission defers action on this issue pending further factual development by the parties.

### **E. Look Back Provision**

The Merger Stipulation sets forth additional customer specific remedies beginning January 1, 2001, if Qwest fails to meet the retail service quality standards of its AFOR during the previous six months.

The DOC argued that Qwest should have performed its first "look back" on January 1, 2001 for the six months beginning July 1, 2000. Qwest argued that the first look back was to occur on July 1, 2001, covering the six months beginning January 1, 2001.

In response to a Commission question on the actual dollar amounts if the look back were applied according to the DOC's interpretation, Qwest stated that it would do its best to reconstruct the data for the Commission.

Both parties indicated that they wanted to try to find more evidence on the negotiation of the Stipulation Agreement to support their respective positions. The Commission defers action on this issue pending further factual development by the parties.

## **IV. Selection of the Consumer Outreach Provider**

### **A. Background**

In its April 13, 2001 Order, the Commission approved a request by the DOC to use the \$890,500 in penalties, pertaining to Qwest's service quality performance for part of 1998, to develop and implement a telecommunications consumer outreach and education campaign. The Commission approved the DOC's recommendation that the campaign be conducted by an outside entity to be approved by the Commission.

On December 10, 2001, the DOC published and distributed its RFP. The DOC received eight proposals from the following organizations: 1) University of Minnesota-Extension, in partnership with Minnesota Technology, Inc. and the Minnesota Department of Administration; 2) Gallagher & Gallagher; 3) Decipher I.T.; 4) Legal Services Advocacy Project, in partnership with GCI Tunheim and Nancy Leland & Associates; 5) Padilla Speer Beardsley; 6) Enterprise MidAmerica, in partnership with Venturi Technology Partners and other professional resources; 7) Le Breche Murray; and 8) Colle & McVoy.

## **B. Recommendation of the DOC**

The DOC reviewed all the proposals it received. The DOC stated its belief that a successful outreach proposal should provide information consumers are looking for, provide it to the largest number of consumers possible and provide the information in a variety of effective ways. The DOC also stated that it strongly believes that the objectives embedded in the proposal should be measurable and focused, to ensure that the success of the program can be evaluated and the organization(s) involved in the program be accountable to the Commission, DOC and RUD-OAG.

The DOC recommended that the Commission select Colle & McVoy (Colle) to implement the consumer outreach and education program. It based its recommendation on the following factors: the proposal is focused enough to identify a target audience, will provide outreach to a large number of Minnesota consumers, is consumer friendly in its format and chosen messages, provides for accountability, and is appropriate given the nature of the outreach program as well as the current state of the telecommunications industry.

Colle conducted one-on-one interviews with consumers, performed an internet study of 200 Minnesotans and interviewed over 30 social service organizations to arrive at its target audiences. Its proposal targets two groups, consumers with a mind-set of “passive acceptance” and underserved populations. Colle found in its research that participation rates in low-income assistance programs were lower in Minnesota than in nearby states and that many social service agencies were unaware of the Telephone Assistance Plan (TAP) and Lifeline programs. It proposed outreach directed at this population to improve participation in these programs.

The DOC believes that Colle’s proposed methods of outreach complement, rather than duplicate, existing outreach already done by the Commission, the DOC and RUD-OAG and other government agencies.

Further, the DOC found that the Colle proposal provided the greatest level of accountability by identifying measurable, focused objectives. The Colle proposal covered a realistic time period relative to the amount of funds available. Other proposals stretched the funds too far, making it less likely that the campaign would have an impact on anyone. The Colle proposal focused on getting the message out and reflected the experience of the firm. It was not dependent on hiring needs, a need for subcontractors, administrative expenses or equipment purchases.

### **C. Recommendation of the RUD-OAG**

The RUD-OAG also evaluated the eight proposals submitted in response to the DOC's RFP. It recommended that the Commission approve the proposal submitted by the University of Minnesota Extension Service (Extension). The RUD-OAG argued that the Extension proposal is distinctive in that it plans to address rural Minnesota and its Internet access needs. It proposes to meet with community members to discuss the realities of getting high speed access into their communities. It plans to work with community and business leaders to find the best solutions to their access needs.

As part of the education part of its plan, Extension proposes to create its own curriculum geared to the needs of its varied audiences. It would add telephone tips to its webpage and would also direct consumers to resources such as the Commission, the DOC and RUD-OAG. The curriculum that would be put in place and the information on the webpage would not disappear when the penalty money is gone. It would be available indefinitely.

### **D. Comments of the Legal Services Advocacy Project**

The Legal Services Advocacy Project asked the Commission to choose a provider that makes provision to reach those served by legal services, i.e., persons whose income is at or below 150% of the federal poverty level, the disabled, persons over 65, non-English speakers and persons from communities of color.

### **E. Commission Action**

The Commission appreciates the input of all parties in evaluating the proposals submitted. Each of the proposals submitted has its own unique strengths and the Commission is gratified at the extent of the interest in consumer outreach and education.

The Commission recognizes that making a choice in these circumstances is difficult. However, the Commission is persuaded by the reasoning of the DOC in recommending the Colle & McVoy proposal. It is impressed with the firm's knowledge and experience in public relations issues, with the preparation that the firm did before putting forth its proposal and with the comprehensive nature of the proposal, including its focus on underserved populations. For these reasons the Commission will accept the recommendation of the DOC and approve the Colle & McVoy proposal.

## **ORDER**

1. The Commission adopts the DOC's interpretation of the application of repair counting and directs Qwest to recalculate this and submit it as part of a compliance filing.

2. The recommendation of the DOC to accept the proposal submitted by Colle & McVoy for the Consumer Outreach Project is approved.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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